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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-339

BUFFALO FORGE COMPANY,

Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL AS INTERNATIONAL PRESIDENT; MITCHEL F. MAZUCA, IND. AND AS DISTRICT DIRECTOR; JOHN GRUKA, IND. AND AS INTERNATIONAL REPRESENTATIVE OF UNITED STEELWORKERS OF AMERICA, AFL-CIO;

LOCAL UNION NO. 1874 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO; VALENTINE F. ZIZZI, IND. AND AS PRESIDENT; VALENTINE OLEJNICZAK, IND. AND AS VICE PRESIDENT OF LOCAL UNION NO. 1874 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO;

LOCAL UNION NO. 3732 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO; KERMIT HASELEY, IND. AND AS PRESIDENT; AND ALFRED LIGAMMARI, IND. AND AS VICE PRESIDENT OF LOCAL UNION NO. 3732 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO;

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONER

JEREMY V. COHEN,
Attorney for Petitioner,
1016 Liberty Bank Building,
Buffalo, New York 14202.

FLAHERTY, COHEN, GRANDE
& RANDAZZO, P.C.,
of Counsel.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716-343-0457

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LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO;

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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REPLY BRIEF FOR THE PETITIONER

I. Respondents have misstated the basic criteria which justify issuance of the injunction order.

Respondents are convinced, erroneously, that this Court's opinion in *Boys Markets*[1] sets forth a "threshold" requirement that "the strike *is* in breach of contract" (Brief, pp. 12-13). The references to various excerpts in the opinion fail to support that conclusion (Brief, p. 12). That strike violated the contractual duty to arbitrate, because the Union struck without resorting to arbitration of the arbitrable employee grievances concerning work assignments. See: *Graphic Arts Local 254 v. Western Publishing Co.*, 522 F. 2d 530 (7th Cir. 1975); cert. denied .... U.S. ...., 91 LRRM 2195.

In *Graphic Arts, supra,* union members refused to handle certain allegedly "struck work" products without first determining, via the contractual arbitration procedure, whether that refusal was within the purview of the "struck work" exception to an express no-strike clause. The 7th Circuit Court of Appeals found the union "had breached" the agreement by engaging in a work stoppage without first exercising its contractual right to arbitration. The Court held that the union would be liable for damages if, on remand, the District Court determined that the work was not "struck work". The Court did not merely determine that prerequisites for a *Boys Markets* injunction had been met; a breach was found because the Union struck without first obtaining arbitral confirmation of its right to strike.

A union's contractual commitment to the arbitration procedure would be hollow at best if it or its members could simply ascertain their own rights under the agreement rather than seek an arbitrator's determination, when an arbitrable dispute exists relating to the exercise of that right. *Gateway*

[1] 398 U.S. 235 (1970)

Coal Co. v. United Mine Workers, 414 U.S. 368, 385-386 (1974).

Respondents urge that the Court must determine that a breach of contract has occurred, but they complain that that determination is contractually reserved for the arbitrator (Brief, pp. 15-16). We had thought that *Boys Markets* disposed of that argument (See also: *Drake Bakerys, Inc. v. Local 50, American Bakery & Confectionary Workers,* 370 U.S. 254 (1962)). The critical requirement satisfied in the instant case is that the parties conferred jurisdiction on the arbitrator to resolve that dispute[2].

Petitioner contends the federal courts properly have jurisdiction to order arbitration and to enjoin a sympathy strike or other work stoppage which was not triggered by an employee or union grievance, when:

(1) The dispute between the contracting parties concerns the application and interpretation of the labor agreement; and

(2) The labor agreement mandates that the dispute is subject to final and binding resolution by arbitration; and

(3) The labor agreement contains a no strike obligation, express or implied.

Yellow Transit, supra, does not stand for the proposition that an injunction will not be granted unless the strike is "over" a grievance (Brief, p.9). The majority delivered a one work reversal opinion on the authority of *Sinclair*[3]. The Con-

[2] "Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act. *We deal only with the situation in which a collective barganing contract contains a mandatory grievance adjustment or arbitration procedure....*". [Emphasis added] *Boys Markets, supra,* at 253. See also *Teamsters v. Yellow Transit System,* 370 U.S. 711 (1962), Concurring Opinion, Brennan, J.

[3] 370 U.S. 195 (1962)

curring Opinion (Brennan, J.) adopted the result solely on the ground the collective bargaining contract did not bind either party to arbitrate *any* dispute. The emphasis of those *Sinclair* dissenters on the absence of any binding arbitration procedure is crucial because an injunction could not have been in aid of any arbitration mechanism.

Association of General Contractors of Illinois v. Illinois Conference of Teamsters, 454 F.2d 1324 (7th Cir. 1972) is cited by Respondents in support of a contention that a sympathy strike injunction will emasculate, if not "repeal" Norris LaGuardia (Brief, p.25).

In that case, employers obtained an injunction order from a District Court which expressly granted the order to preserve the Court's—not an arbitrator's—jurisdiction to resolve the underlying dispute. It is undisputed that this rational is one of the main reasons for passage of Norris LaGuardia.

The 7th Circuit (Stevens, J.) correctly observed that the "*quid pro quo* which substitutes arbitration—not litigation—for economic warfare is not part of this contract" (454 F.2d at 1329-30). "The union had not agreed to compulsory arbitration. On the contrary, it had expressly reserved the right to 'economic recourse' in the event of a deadlock" (454 F.2d at 1329)[4].

II. When a union waives its right to strike, the effect of a preliminary injunction on the strike's success is irrelevant.

Respondents also contend that to grant injunctive relief to an employer pending arbitration of the scope of the right to strike, eliminates the protection of Norris-LaGuardia (Brief,

[4] At footnote 13 (454 F.2d. at 1330), the Court observed: "a provision for binding arbitration which is not present in this case was of critical importance in the cited cases" (citing *Boys Markets, et al.*).

pp. 15-16). Suspension of the sympathy strike causes irreparable harm because, Respondents urge, "the timing of a strike is critical to its success" (Brief, p. 14).

Respondents are preoccupied more with the effectiveness of the strike weapon than with considerations of whether its use can be squared with the no-strike clause to which the Union and its members voluntarily agreed to be bound. Since an injunction order, whether providently or improvidently granted, will in any event have the same effect, the critical issue is whether the order is justified by federal pro-arbitration policies.

Senator Norris' quoted remarks do not support Respondents' claims of potential irreparable harm (Brief, p.14). As Petitioner has previously urged in its main brief (p.21), prompt resort to arbitration, fashioned by the District Court's decree, will obviate protracted litigation and delay, if the arbitrator decides the Union was contractually free to strike (*Valmac Industries, Inc.*, 519 F.2d. 263 (8th Cir.1975); petition for cert. filed U.S. October 31, 1975, No. 75-647). The essence of Respondent's untenable position is that a union enjoys a higher status in striking in advancement of another union's cause than in striking in advancement of a direct cause of its own. *Shop-Rite Foods, Inc.*, 58 L.A. 965 (1972).

Conclusion.

For the reasons stated, it is respectfully urged that the judgment of the Court of Appeals for the Second Circuit should be reversed with instructions to direct arbitration of the issue of whether the Unions' conduct violated the terms of the collective bargaining agreement and to enjoin any resumption of the sympathy strike and work stoppage pending arbitration.

Respectfully submitted,

JEREMY V. COHEN,
FLAHERTY, COHEN, GRANDE
& RANDAZZO, P.C.,
1016 Liberty Bank Building,
Buffalo, New York 14202,
Attorney for Petitioner.